HIGH COURT OF UTTARANCHAL AT – NAINITAL.

Writ Petition No. 1060(S/S)2004

Chandan Singh S/o Sri Bishan Singh,
R/o Kotabagh,
District Nainital. .....Petitioner.

Vs.

1. **The Secretary, Forest Department,**
   Govt. of Uttaranchal, Dehradun,
2. **The Conservator of Forrest, Kumaon Mandal,**
   Nainital.
3. **The Divisional Forest Officer,**
   Division Ramnagar. .....Respondents.

Sri Subhash Upadhyay, learned counsel for the petitioner.
Learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Subhash Upadhyay, learned counsel for the petitioner and learned Standing Counsel for the respondents.

Learned counsel for the parties are agreed that the writ petition may be decided at the admission stage itself.

Counter affidavit has been filed by the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of mandamus commanding the respondents to treat the petitioner's appointment as permanent in nature and further directions may be issued to the respondents to consider the case of the petitioner for his regularisation.

Brief facts giving rise to the present writ petition are that the father of the petitioner was engaged as a daily

wager with the respondent's establishment in the year 1972 and continued to work for 30 years till he expired on 24th September 2002. At the time of death, the petitioner's father was working as Gate Keepar at Kaladhungi Range of the Department and he died as such, during the course of his employment. On 11th November 2002, the mother of the petitioner wrote a letter to the Forest Range Officer, Forest Division, Ramnagar for recruitment of the petitioner under Dying-in-Harness Rules. The application was duly forwarded by the authority concerned, consequently the petitioner was engaged with the establishment on temporary basis as a daily wager from Ist December 2002. On Ist August 2004, the petitioner was intimated orally that he is being removed from the services. On 5th August 2002, the petitioner moved representation that he may be allowed to work, however the respondents took no action, hence the petitioner was compelled to file the present writ petition.

Learned Standing Counsel has filed counter affidavit. In para-9 of the counter affidavit, the respondents have submitted that the petitioner has worked with the Department w.e.f. December 2002 to April 2004 and thus, he has worked only for 16 months as a casual labour and on account of non-availability of fund he was not engaged thereafter.

Learned Standing Counsel has argued that the petitioner was not engaged after April 2004, in furtherance of the Government issued a G.O. dated 6th February 2003

by which a ban was imposed on the recruitment of Class-III and Class-IV employees. This G.O. was issued on 6th February 2003 by which a ban was imposed in future on all the recruitments of the posts of Class-III and Class-IV. But so far the petitioner is concerned, he was already engaged by the Department in the month of December 2002 and was allowed to work till April 2004, even after 14 months of the passing of the said G.O. on which the learned Standing Counsel is relying.

Contention of the petitioner is that the appointment provided under Dying-in-Harness Rules, should be in the nature of regular appointment and it cannot be treated like to those appointed as daily wage employees. To give support to his argument, learned counsel for the petitioner has placed reliance on the judgment of the Division Bench of Allahabad High Court in the case of Ravi Karan Singh vs. State of U.P., reported in 1999(3) U.P. Local Bodies and Educational Cases, page 2263 wherein the Hon'ble Division Bench has held that the appointment provided under Dying-in-Harness Rules should be treated as permanent appointment. He has further relied on the judgment of Allahabad High Court in the case of Gulab Yadav vs. State of U.P. and others, reported in 1991(2) UPLBEC, page 995 wherein the Court has held that appointment provided under Dying-in-Harness Rules should be treated as permanent appointment and not a temporary appointment.

Learned counsel for the petitioner has further submitted that the petitioner has worked with the Department till 31st July 2004, however he has yet not received the wages for the period May 2004 to 31st July 2004.

I find force in the argument advanced by the learned counsel for the petitioner that the appointment provided under Dying-in-Harness Rules should be treated as a regular appointment and not a temporary appointment.

Learned counsel for the petitioner has submitted in para-12 of the rejoinder affidavit that after the disengagement of the petitioner in the month of August 2004, the respondents have engaged one Sri Raju Pande in the month of December 2004 and, as such, the plea raised by the learned Standing Counsel that the petitioner could not be engaged only because of non-availability of fund has no substance and, as such, is rejected.

In view of the aforesaid reasons, the writ petition is allowed. The respondents are directed to treat the appointment of the petitioner regular in nature, as he has been appointed under Dying-in-Harness Rules, and pay wages to him for the period for which he has worked. The respondents are further directed to pay wages to the petitioner for the period May 2004 to July 2004. The respondents shall pass appropriate orders to this effect within a period of three weeks from the date of production of a certified copy of this order. The petitioner shall not

claim wages for the period August 2004 till he is engaged by the respondents.

(M.M. Ghildiyal, J.)

March 18, 2005:
NCM: